IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	:	Group Art Unit: 3691
	:	Examiner Shresta, B. K.
Timothy A. Dietz et al.	:	Confirmation No. 6049
Serial No: 09/998,046	:	
Filed: 11/29/2001	:	
Title: GENERATING CONTRACT	:	
REQUIREMENTS FOR SOFTWARE	:	Customer No. 25,299
SUPPLIERS BASED UPON	:	
ASSESSING THE QUALITY LEVELS	:	
OF QUALITY ATTRIBUTES OF THE	:	
SUPPLIERS	:	
Date: 02/25/08	:	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Sir:

This is an Appeal from the Final Rejection of Claims 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40 of this Application dated September 24, 2007. Section VIII. Appendix containing a copy of each of the Claims is attached.

I. Real Party in Interest

The real party in interest is International Business Machines Corporation, the assignee of the present Application.

II. Related Appeals and Interferences

None

III. Status of Claims

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

There are 21 claims in this Application.

B. STATUS OF ALL THE CLAIMS

1. Claims cancelled: 2, 4, 6, 12, 14, 16, 21-30, 32, 34, and 36.
2. Claims withdrawn from consideration but not cancelled: None.
3. Claims pending: 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40.
4. Claims allowed: None.
5. Claims rejected: 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40.

C. CLAIMS ON APPEAL

Claims on appeal: 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40.

IV Status of Amendments

No amendments have been filed after Final Rejection.

V. Summary of Claimed Subject Matter

Independent claim 1 is annotated as follows with respect to the Specification and Drawings.

1. A computer controlled [controlled by CPU 10, Fig. 1, described on page 7, lines 13-15 of Specification] display system [display adapter 36, frame buffer 39 and display 38, Fig.1, page 7, line 28 through page 8, line 4] for generating quality assurance contract requirements for software suppliers comprising:

means for assessing the quality level of each of a set of quality attributes of said software suppliers [with respect to Fig. 2, the means for assessing, the means are described at page 8, lines 17-27 which describes the collection of data relative to the attributes of the supplier] including

means for dynamically determining one of a plurality of quality levels for each of said set of quality attributes [Fig. 1, show the display of overall quality level "1", 46 for a supplier 42, as described on page 8, lines 10-17; the means are described with respect to Fig. 1, page 7, lines 7-13 which sets forth that the application program 40 of the present invention is stored on RAM 14, and under control of CPU 10 carries out the functions defined in this invention], and

means for generating a different contract requirement for each of said quality levels for each attribute [Fig. 5 show several attributes 66, 67, and 68, and quality levels (level 5), (level 2), and (level 1) respectively for each of these attributes, and a respective set of contract requirements 65, 64, and 63 based upon the respective levels of each of the attributes, page 9, lines 1-13. As described above, the means are described with

respect to Fig. 1, page 7, lines 7-13 which sets forth that the application program 40 of the present invention is stored on RAM 14, and under control of CPU 10 carries out the functions defined in this invention]; and

means for generating for each of said quality attributes at least one contract requirement for said supplier based upon the quality level, [Fig. 5 shows three sets, 63-65, of contract requirements levels 5, 2, and 1 of attributes 67-69, page 9, lines 3-13; here again the means are described with respect to Fig. 1, page 7, lines 7-13 which sets forth that the application program 40 of the present invention is stored on RAM 14, and under control of CPU 10 carries out the functions defined in this invention] of said attribute wherein said contract requirement involves tracking and reporting [Fig. 5, among the items to be tracked or reported are "Supplier will provide weekly report..", 63, "Supplier will provide the results...", "supplier will mail test results...", 65, page 9, lines 10-13] of said software development.

Independent claim 11 is annotated as follows with respect to the Specification and Drawings.

11. A method for generating, on a user interactive computer controlled [controlled by CPU 10, Fig. 1, described on page 7, lines 13-15 of Specification] display system [display adapter 36, frame buffer 39 and display 38, Fig.1, page 7, line 28 through page 8, line 4], quality assurance contract requirements for software suppliers comprising:

assessing the quality level of each of a set of quality attributes of said software supplier [with respect to Fig. 2, the means for assessing, the means are described at page 8, lines 17-27 which describes the collection of data relative to the attributes of the supplier] including

dynamically determining one of a plurality of quality levels for each of said set of quality attributes [Fig. 1, show the display of overall quality level "1", 46 for a supplier 42, as described on page 8, lines 10-17; the means are described with respect to Fig. 1, page 7, lines 7-13 which sets forth that the application program 40 of the present invention is stored on RAM 14, and under control of CPU 10 carries out the functions defined in this invention], and

generating a different contract requirement for each of said quality levels for each attribute [Fig. 5 show several attributes 66, 67, and 68, and quality levels (level 5), (level 2), and (level 1) respectively for each of these attributes, and a respective set of contract requirements 65, 64, and 63 based upon the respective levels of each of the attributes, page 9, lines 1-13. As described above, the means are described with respect to Fig. 1, page 7, lines 7-13 which sets forth that the application program 40 of the present invention is stored on RAM 14, and under control of

CPU 10 carries out the functions defined in this invention]; and

generating for each of said quality attributes at least one contract requirement for said supplier based upon the quality level [Fig. 5 shows three sets, 63-65, of contract requirements levels 5, 2, and 1 of attributes 67-69, page 9, lines 3-13; here again the means are described with respect to Fig. 1, page 7, lines 7-13 which sets forth that the application program 40 of the present invention is stored on RAM 14, and under control of CPU 10 carries out the functions defined in this invention] of said attribute wherein said contract requirement involves tracking and reporting [Fig. 5, among the items to be tracked or reported are "Supplier will provide weekly report..", 63, "Supplier will provide the results...", "supplier will mail test results...", 65, page 9, lines 10-13] of said software development.

Independent claim 31 is annotated as follows with respect to the Specification and Drawings.

31. A computer program comprising a computer useable medium having a computer readable program [With reference to Fig. 1, page 11, lines 27-33 describes a computer readable medium such as RAM 14 or disk drive 20, on which the application program 40 of this invention is stored] wherein the computer readable program when executed on a computer [the instructions or steps in the program which are executed are described on page 10, lines 8-33 with respect to Fig. 6, steps 71-77, as will be detailed in the following steps] causes the computer to:

assess the quality level of each of a set of quality attributes of said software supplier [step 71, Fig. 6, page 10, lines 10-12] including

to dynamically determine one of a plurality of quality levels for each of said set of quality attributes [step 72, Fig. 6, page 10, lines 13-16], and

to generate a different contract requirement for each of said quality levels for each attribute [step 73, Fig. 6, page 10, lines 17-19]; and

generate for each of said quality attributes at least one contract requirement for said supplier based upon the quality level of said attribute [steps 74 and 75, Fig. 6, page 10, lines 19-27] wherein said contract requirement involves tracking and reporting [Fig. 5, among the items to be tracked or reported are "Supplier will provide weekly report..", 63, "Supplier will provide the results...", "supplier will mail test results...", 65, page 9, lines 10-13] of said software development.

Dependent claim 8 (argued separately) is annotated as follows with respect to the Specification and Drawings.

8. The computer controlled display system of claim 1 wherein said contract requirement involves software supplier risk identification and reduction [page 5, lines 3-7 of Specification].

Dependent claim 18 (argued separately) is annotated as follows with respect to the Specification and Drawings.

18. The method of claim 11 wherein said contract requirement involves software supplier risk identification and reduction [page 5, lines 3-7 of Specification].

Dependent claim 38 (argued separately) is annotated as follows with respect to the Specification and Drawings.

38. The computer program of claim 31 wherein said contract requirement involves software supplier risk identification and reduction [page 5, lines 3-7 of Specification].

VI. Grounds of Rejection to be Reviewed on Appeal

A. Claims 1, 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 33, 35, 37 and 39-40 are rejected as obvious and un patentable under 35 USC 103(a) over Aycock (US5,765,138), in view of Moderegger (US2002/0049642), further in view of Zinky et al (US6,691,148).

B. Claims 8, 18, and 38 are rejected as obvious and unpatentable under 35 USC 103(a) over Aycock (US5,765,138), in view of Moderegger (US2002/0049642), further in view of Zinky et al (US6,691,148), still further in view of Kansai (US6,647,374).

VII. Argument

(A.) Claims 1, 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 33, 35, 37, and 39-40 are unobvious and patentable under 35 USC 103(a) over Aycock (US5,765,138) in view of Moderegger (US2002/0049642) further in view of Zinky et al (US6,691,148).

In order to support a combination of three references in an obviousness rejection under 35 USC 103(a), as in the present rejection, the suggestion that the three references be combined and how they may be combined must come with foresight from the references themselves, and not with hindsight based upon Applicants' own teaching. It is submitted that in combining the three references that Examiner has used Applicants' own teaching, and then combined elements from each of the three references with hindsight based solely upon Applicants' own teaching.

It is further submitted, as will be hereinafter shown, that even if the teachings selected from the three references could be combined as suggested by Examiner, the combination would still not render the present claimed invention obvious based the combination of references under 35 USC 103, i.e. there would still be elements of the present claimed invention missing from the proposed combination of references.

Review of the Claimed Invention

To review the present claimed invention, the invention relates to the computer generation of vendor or supplier contracts. In complex development of software products, there is considerable cooperative effort needed in the generation of software components. Because of the numbers of providers involved and the short time schedules, computer generation of contracts expedites development processes.

The present invention provides for the computer generation of contract requirements. The invention covers assessing the quality level of a proposed supplier for a set of quality attributes, generating different contract requirements for each of the attribute levels, and then based upon the assessment of a particular supplier, computer generating a particular group for contract requirements for that supplier based upon the assessment attribute levels determined for that supplier.

Aycock (US2002/0049642)

All that this reference, which is used as the basic reference in the 35 USC 103 rejection, discloses relates to interactive computer assessments of potential suppliers. Examiner has conceded (page 3, middle paragraph, Final rejection) that Aycock does not disclose the generation of a contract requirement after assessing a supplier. Examiner has further conceded (page 4, first paragraph, Final rejection) that Aycock further fails to disclose that any generated contract requirement based upon the quality level of an assessed attribute of the supplier.

Moderegger (US2002/0049642)

Although Moderegger discloses assessing the supplier, there is no suggestion in Moderegger of using the quality level of any attribute of the assessed supplier as a basis on which to generate a contract provision. In Moderegger, a set of contract performance requirements are predetermined. Then, several suppliers are assessed as to who would be the best supplier to perform these predetermined requirements. In Moderegger, the best supplier is selected and the original predetermined set of unchanged requirements are

offered to the selected supplier. No contract requirement is generated as a result of the assessment of the supplier.

Zinky (US6,691,148)

Zinky does make up for any of the above deficiencies of the combination of Aycock in view Moderegger for an obviousness rejection under 35 USC 103(a). Zinky discloses a contract for a vendor or supplier which recites quality levels for a plurality of performance attributes. However, Zinky does not suggest contract requirements generated for a particular supplier as a result of assessments of the supplier.

In Zinky, the actual performance of a supplier, during the course of a contract, for a group of attributes are tracked to determine the quality level the performance of the particular attributes, and if any levels falls below predetermined expectations, the performance quality levels are then remedied. At best, Zinky teaches changing required performance attributes based upon evaluation of a vendor's performance during the course of a completed and existing contract. In any event, in Zinky, every assessment is done during performance of a completed contract. Consequently, there is no suggestion of contract requirement generated as a result of any assessment of the Examiner.

In view of the foregoing, it is submitted that claims 1, 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 33, 35, 37, and 39-40 are unobvious and patentable under 35 USC 103(a) over Aycock (US5,765,138) in view of Moderegger (US2002/0049642) further in view of Zinky et al (US6,691,148).

(B.) Claims 8, 18, and 38 are rejected as obvious and unpatentable under 35 USC 103(a) over Aycock (US5,765,138), in view of Moderegger (US2002/0049642), further in view of Zinky et al (US6,691,148), still further in view of Kansai (US6,647,374).

Claims 8, 18, and 38 which respectively depend from independent claims 1, 11, and 31 are submitted to be patentable under 35 USC 103(a) for all of the same reasons set forth hereinabove for the patentability of said independent claims.

In addition, claims 8, 18, and 38 include a further element wherein the contract requirement further involves software supplier risk identification and reduction. Even if it be conceded that Kansai discloses this further contract requirement, Appellants submit that claims 8, 18, and 38 remain patentable under 35 USC 103(a) for all of the reasons set forth hereinabove for the patentability of independent claims 1, 11, and 31 from which claims 8, 18, and 38 depend.

Conclusion

In view of the foregoing, it is submitted that claims 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40 are now in condition for allowance, and such allowance is respectfully requested.

Accordingly, the Board of Appeals is respectfully requested to reverse the Final Rejection and find claims 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40 in condition for allowance.

Respectfully submitted,

/J.B.Kraft/ 02/25/08

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VIII. Claims Appendix

1. A computer controlled display system for generating quality assurance contract requirements for software suppliers comprising:

means for assessing the quality level of each of a set of quality attributes of said software suppliers including

means for dynamically determining one of a plurality of quality levels for each of said set of quality attributes, and

means for generating a different contract requirement for each of said quality levels for each attribute; and

means for generating for each of said quality attributes at least one contract requirement for said supplier based upon the quality level of said attribute wherein said contract requirement involves tracking and reporting of said software development.

3. The computer controlled display system of claim 1 wherein no contract requirement is generated for at least one of said quality levels for at least one of said quality attributes.

5. The computer controlled display system of claim 1 wherein:

said set of quality attributes consists of a single overall quality characteristic having several predetermined quality levels, and

said means for generating provides a plurality of contract requirements for each of said predetermined quality levels.

7. The computer controlled display system of claim 1 wherein said contract requirement involves tracking and reporting of testing of said software.

8. The computer controlled display system of claim 1 wherein said contract requirement involves software supplier risk identification and reduction.

9. The computer controlled display system of claim 1 wherein said contract requirement involves the management processes of said supplier.

10. The computer controlled display system of claim 1 wherein:

said display system assigns said software supply function to said software supplier in an overall work flow distribution system; and

said means for generating automatically generate and distribute said contract requirements to said supplier in response to the selection of said supplier.

11. A method for generating, on a user interactive computer controlled display system, quality assurance contract requirements for software suppliers comprising:

assessing the quality level of each of a set of quality attributes of said software supplier including

dynamically determining one of a plurality of quality levels for each of said set of quality attributes, and

generating a different contract requirement for each of said quality levels for each attribute; and

generating for each of said quality attributes at least one contract requirement for said supplier based upon the quality level of said attribute wherein said contract requirement involves tracking and reporting of said software development.

13. The method of claim 11 wherein no contract requirement is generated for at least one of said quality levels for at least one of said quality attributes.

15. The method of claim 11 wherein:

said set of quality attributes consists of a single overall quality characteristic having several predetermined quality levels, and

a plurality of contract requirements for each of said predetermined quality levels is generated.

17. The method of claim 11 wherein said contract requirement involves tracking and reporting of testing of said software.

18. The method of claim 11 wherein said contract requirement involves software supplier risk identification and reduction.

19. The method of claim 11 wherein said contract requirement involves the management processes of said supplier.

20. (original) The method of claim 11 wherein:

said software supply function is assigned to said software supplier in an overall work flow distribution method; and

said contract requirements are automatically generated and distributed to said supplier in response to the selection of said supplier.

31. A computer program comprising a computer useable medium having a computer readable program, wherein the computer readable program when executed on a computer causes the computer to:

assess the quality level of each of a set of quality attributes of said software supplier including

to dynamically determine one of a plurality of quality levels for each of said set of quality attributes, and

to generate a different contract requirement for each of said quality levels for each attribute; and

generate for each of said quality attributes at least one contract requirement for said supplier based upon the quality level of said attribute wherein said contract requirement involves tracking and reporting of said software development.

33. The computer program of claim 31 wherein no contract requirement is generated for at least one of said quality levels for at least one of said quality attributes.

35. (currently amended) The computer program of claim 31 wherein:

said set of quality attributes consists of a single overall quality characteristic having several predetermined quality levels, and

said computer program causes said computer program to generate a plurality of contract requirements for each of said predetermined quality levels.

37. The computer program of claim 31 wherein said contract requirement involves tracking and reporting of testing of said software.

38. The computer program of claim 31 wherein said contract requirement involves software supplier risk identification and reduction.

39. The computer program of claim 31 wherein said contract requirement involves the management processes of said supplier.

40. The computer program of claim 31 wherein:

said software supply function is assigned to said software supplier in an overall work flow distribution method; and

said contract requirements are automatically generated and distributed to said supplier in response to the selection of said supplier.

IX. Evidence Appendix

There was no evidence presented in the prosecution of the present Application.

X. Related Proceedings Appendix

There are no proceedings related to the present proceedings.